

2005 No. 2901

DISABLED PERSONS

The Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005

<i>Made</i>	- - - -	<i>17th October 2005</i>
<i>Laid before Parliament</i>		<i>24th October 2005</i>
<i>Coming into force</i>		
<i>Regulation 1 and 12</i>		5th December 2005
<i>the remainder</i>		4th December 2006

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 20(7) and (8), 21(5)(a), (b) and (e), 21D(7)(a), 21E(8)(a) and (d), 27(3), 67(2) and (3), 68(1) of, and paragraphs 8(a) and (b) and 9 of Schedule 4 to the Disability Discrimination Act 1995(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005 and shall come into force on 4th December 2006, except for this regulation and regulation 12 which shall come into force on 5th December 2005.

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995;

“building” means an erection or structure of any kind;

“incepted” refers to the time when the liability to risk of an insurer under a policy of insurance commenced;

(a) 1995 c.50; section 20(7) was amended by the Disability Discrimination Act 2005 (c.13) (“the 2005 Act”), Schedule 1, paragraphs 1 and 14; sections 21D(7) and 21E were inserted by section 2 of the 2005 Act; section 27 was amended by the 2005 Act, Schedule 1, paragraphs 1 and 23; section 67(3) was amended by the 2005 Act, Schedule 1, paragraphs 1 and 33(3); and section 68(1), which is cited because of the meaning there given to “prescribed” and “regulations”, was amended by the 2005 Act, Schedule 1, paragraphs 1 and 34.

“insurance business” means business which consists of effecting or carrying out contracts of insurance;

“insurer” means a person who may carry on insurance business without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000(a); and

“public authority carrying out its functions” means a public authority carrying out an activity to which section 21B of the 1995 Act applies.

(2) The definition of “insurance business” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

PART 2

JUSTIFICATION

Circumstances in which mental incapacity justification does not apply

3. The conditions specified in sections 20(4)(b) and 21D(4)(b) of the 1995 Act shall not apply where another person is acting for a disabled person by virtue of—

- (a) a power of attorney; or
- (b) functions conferred by or under Part 7 of the Mental Health Act 1983(b); or
- (c) powers exercisable in relation to the disabled person’s property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.

Insurance services: circumstances in which less favourable treatment is justified

4.—(1) Where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 20 of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the less favourable treatment is—

- (a) in connection with insurance business carried on by the provider of services;
- (b) based upon information (for example, actuarial or statistical data or a medical report) which is relevant to the assessment of the risk to be insured and is from a source on which it is reasonable to rely; and
- (c) reasonable having regard to the information relied upon and any other relevant factors.

Insurance services: transitional provisions for existing policies

5.—(1) Subject to paragraph (2), and except where regulation 6 applies, where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 20 of the 1995 Act if the treatment is in connection with insurance business carried on by the provider of services and relates to an existing policy.

(2) Subject to paragraph (4), where an existing policy is due to be renewed, or the terms of such a policy are due to be reviewed, on or after 4th December 2006, any less favourable treatment

(a) 2000 c.8.

(b) 1983 c.20. Part 7 is repealed by section 66 and Schedule 7 of the Mental Capacity Act 2005 (c.9) which are not yet in force.

which occurs on or after the date that the review or renewal is due shall not be taken to be justified under paragraph (1).

(3) In this regulation “an existing policy” means a policy of insurance which incepted before 2nd December 1996 and which was not due to be renewed, or the terms of which policy were not due to be reviewed, before 4th December 2006.

(4) A review of an existing policy which is part of, or incidental to, a general reassessment by the provider of services of the pricing structure for a group of policies shall not be treated as a review for the purposes of paragraphs (2) and (3).

Insurance services: transitional provisions for cover documents and master policies

6.—(1) Subject to paragraphs (2) and (3), where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 20 of the 1995 Act if the treatment is in connection with insurance business carried on by the provider of services and relates to a cover document which incepted before 2nd December 1997 and which was not due to be renewed, or the terms of which document were not due to be reviewed, before 4th December 2006.

(2) Paragraph (1) does not apply in a case where—

- (a) the relevant master policy was entered into or renewed on or after 2nd December 1996; or
- (b) the terms of the relevant master policy were reviewed on or after 2nd December 1996,

and for this purpose “the relevant master policy” means the master policy under which the cover document was issued.

(3) Where a cover document is due to be renewed, or the terms of such a document are due to be reviewed, on or after 4th December 2006, any less favourable treatment which occurs on or after the date that the review or renewal is due shall not be taken to be justified under paragraph (1).

(4) In this regulation—

“cover document” means a certificate or policy issued under a master policy;

“master policy” means a contract between an insurer and another person under which that person is entitled to issue certificates or policies to individuals, and which details the terms on which that person may do so.

Provision of services and guarantees: circumstances in which less favourable treatment is justified

7.—(1) Where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 20 of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

- (a) the provider of services provides a guarantee (whether or not legally binding) that—
 - (i) the purchase price of services that he has provided will be refunded if the services are not of satisfactory quality, or
 - (ii) services in the form of goods that he has provided will be replaced or repaired if those goods are not of satisfactory quality; and
- (b) the provider of services refuses to provide a replacement, repair or refund under the guarantee because damage has occurred for a reason which relates to the disabled person’s disability, and the damage is above the level at which the provider of services would normally provide a replacement, repair or refund under the guarantee; and
- (c) it is reasonable in all the circumstances for the provider of services to refuse to provide a replacement, repair or refund under the guarantee.

(3) In this regulation “guarantee” includes any document having the effect referred to in paragraph (2)(a) whether or not that document is described as a guarantee by the provider of services.

Deposits in respect of the provision of goods and facilities: circumstances in which less favourable treatment is justified

8.—(1) Where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 20 of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

- (a) when goods or facilities are provided, the disabled person is required to provide a deposit which is refundable if the goods or facilities are undamaged; and
- (b) the provider of services refuses to refund some or all of the deposit because damage has occurred to the goods or facilities for a reason which relates to the disabled person’s disability, and the damage is above the level at which the provider of services would normally refund some or all of the deposit; and
- (c) it is reasonable in all the circumstances for the provider of services to refuse to refund some or all of the deposit.

PART 3

REASONABLE ADJUSTMENTS TO PHYSICAL FEATURES

Physical features

9. For the purposes of sections 21(2) and 21E(3) of the 1995 Act, the following are to be treated as physical features (whether permanent or temporary)—

- (a) any feature arising from the design or construction of a building on the premises occupied by the provider of services or by the public authority carrying out its functions;
- (b) any feature on the premises occupied by the provider of services or by the public authority carrying out its functions of any approach to, exit from or access to such a building;
- (c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the provider of services or by the public authority carrying out its functions;
- (d) any fixtures, fittings, furnishings, furniture, equipment or materials brought by or on behalf of the provider of services or by or on behalf of the public authority carrying out its functions on to premises (other than the premises that they occupy)—
 - (i) in the course of providing services to the public or to a section of the public or in the course of carrying out its functions,
 - (ii) for the purpose of providing such services or carrying out such functions;
- (e) any other physical element or quality of any land comprised in the premises occupied by the provider of services or public authority carrying out its functions.

Reasonableness where consent of third party necessary for an adjustment to physical features of premises

10.—(1) This regulation prescribes particular circumstances, for the purposes of sections 21 and 21E of the 1995 Act, in which it is reasonable, and in which it is not reasonable, for a provider of services or a public authority carrying out its functions to have to take the steps specified in this regulation.

(2) Where—

- (a) under any binding obligation a provider of services or a public authority carrying out its functions is required to obtain the consent of any person to an alteration to premises which it occupies; and
- (b) that alteration is one which, but for that requirement, it would be reasonable for the provider of services or a public authority carrying out its functions to have to make in order to comply with a duty under section 21 or 21E of the 1995 Act,

it is reasonable for the provider of services or public authority carrying out its functions to have to request that consent; but it is not reasonable for it to have to make that alteration before that consent is obtained.

(3) In this regulation “binding obligation” means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise.

Reasonableness and design standards

11.—(1) This regulation prescribes particular circumstances, for the purposes of sections 21 and 21E of the 1995 Act, in which it is not reasonable for a provider of services or a public authority carrying out its functions to have to take the steps specified in this regulation.

(2) It is not reasonable for a provider of services or a public authority carrying out its functions to have to remove or alter a physical feature where the feature concerned—

- (a) was provided in or in connection with a building for the purpose of assisting people to have access to the building or to use facilities provided in the building; and
- (b) satisfies the relevant design standard.

(3) Whether a physical feature satisfies the relevant design standard shall be determined in accordance with Schedule 1.

PART 4

MISCELLANEOUS PROVISIONS

Amendment of regulation 8 of the Disability Discrimination (Services and Premises) Regulations 1996

12.—(1) Regulation 8 of the Disability Discrimination (Services and Premises) Regulations 1996(a) is amended as follows.

(2) For paragraph (c) substitute—

“(c) powers exercisable in relation to the disabled person’s property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.”.

Amendment of regulation 1 of the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001

13.—(1) Regulation 1 of the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001(b) is amended as follows.

(2) After paragraph (1) insert—

“(1A) These Regulations apply to a provider of services, a public authority carrying out its functions within the meaning given by section 21B of the Act or an association to which section 21F of the Act applies.”.

(a) S.I. 1996/1836.
(b) S.I. 2001/3253.

Revocations

14. The Regulations specified in column 1 of Schedule 2 shall be revoked to the extent specified in column 3 of that Schedule.

Signed by authority of the Secretary of State for Work and Pensions.

Anne C McGuire
Parliamentary Under Secretary of State,
Department for Work and Pensions

17th October 2005

SCHEDULE 1

Regulation 11(3)

REMOVAL OR ALTERATION OF PHYSICAL FEATURES: DESIGN STANDARDS

Definition of “relevant design standard”

1.—(1) Subject to sub-paragraph (3), a physical feature, in relation to a building situated in England or Wales, satisfies the relevant design standard for the purposes of regulation 11(2) where it accords with the relevant objectives, design considerations and provisions in Approved Document M.

(2) Subject to sub-paragraph (3), a physical feature, in relation to a building situated in Scotland, satisfies the relevant design standard for the purposes of regulation 11(2) where—

- (a) it was provided in or in connection with the building on or after 30th June 1994 and before 1st May 2005 in accordance with the Technical Standards relevant in relation to that feature; or
- (b) it was provided in or in connection with the building on or after 1st May 2005 in accordance with the relevant functional standards and guidance in the Technical Handbook.

(3) A physical feature does not satisfy the relevant design standard where more than 10 years have elapsed since—

- (a) the day on which the construction or installation of the feature was completed; or
- (b) in the case of a physical feature provided as part of a larger building project, the day on which the works in relation to that project were completed.

Buildings in England and Wales

2.—(1) For the purposes of this paragraph and paragraph 1(1)—

- (a) “Approved Document M” means—
 - (i) the 1992 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 1991^(a), first published for the Department of the Environment by Her Majesty’s Stationery Office in 1991 (ISBN 011 752447 6); or
 - (ii) the 1999 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 1991, first published for the Department of the Environment,

(a) S.I. 1991/2768 (revoked by S.I. 2000/2531 as from 1 January 2001, except in relation to building work carried out or to be carried out in accordance with a building notice, an initial notice, an amendment notice or a public body’s notice given to, or full plans deposited with, a local authority, before that date).

Transport and the Regions by The Stationery Office under licence from the Controller of Her Majesty's Stationery Office in 1998 (ISBN 011 753469 2); or

(iii) the 2004 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 2000(a), first published for the Office of the Deputy Prime Minister by The Stationery Office under licence from the Controller of Her Majesty's Stationery Office in 2003 (ISBN 011 753901 5);

(b) "the Building Regulations" means the Building Regulations 1991 or the Building Regulations 2000.

(2) In the case of a physical feature provided as part of building works to which the Building Regulations applied, for the purposes of paragraph 1(1) Approved Document M is whichever edition is the practical guidance which was relevant in relation to meeting the requirements of the Building Regulations which applied to those building works.

(3) In any other case, for the purposes of paragraph 1(1) Approved Document M is whichever edition was the last edition published at the time when the physical feature was provided in or in connection with the building.

(4) For the purposes of sub-paragraph (3), a physical feature is deemed to be provided in or in connection with the building on—

(a) the day upon which the works to install or construct the feature were commenced; or

(b) in the case of a physical feature provided as part of a larger building project, the day upon which the works in relation to that project were commenced.

(5) Where in relation to the physical feature in question any provision of Approved Document M refers to a standard or specification (in whole or in part), that standard or specification shall be construed as referring to any equivalent standard or specification recognised for use in any member state of the European Community or European Economic Area.

Buildings in Scotland

3.—(1) For the purposes of this paragraph and paragraph 1(2)—

(a) "Technical Standards" means the Technical Standards as defined by regulation 2(1) of the Building Standards (Scotland) Regulations 1990(b) in effect at the time when the physical feature was provided in or in connection with the building;

(b) "Technical Handbook" means the Scottish Building Standards Agency Technical Handbook for non-domestic buildings approved by the Scottish Ministers as guidance meeting the requirements of the Building (Scotland) Regulations 2004(c), published by Astron for the Scottish Building Standards Agency on 1st November 2004 (ISBN 09546292 3 X).

(2) For the purposes of paragraph 1(2) and sub-paragraph (1)(a), and subject to sub-paragraph (3), a physical feature is deemed to be provided in or in connection with the building on—

(a) the day upon which the works to install or construct the feature were commenced; or

(b) in the case of a physical feature provided as part of a larger building project, the day upon which the works in relation to that project were commenced.

(3) In a case where the physical feature is provided as part of building works in relation to which an application for a warrant for the construction or change of use of the building has been made and granted, the works are deemed to have commenced on the day upon which the application for the warrant was made.

(4) Where in relation to the physical feature in question any provision of the Technical Standards or Technical Handbook refers to a standard or specification (in whole or in part), that

(a) S.I. 2000/2531 (Part M substituted by S.I. 2003/2692).

(b) S.I. 1990/2179 (s.187) (as amended by S.S.I. 1999/173 and S.S.I. 2001/320).

(c) S.S.I. 2004/406.

standard or specification shall be construed as referring to any equivalent standard or specification recognised for use in any member state of the European Community or European Economic Area.

SCHEDULE 2

Regulation 14

REVOCATIONS

(1)	(2)	(3)
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of Revocation</i>
Disability Discrimination (Services and Premises) Regulations 1996	SI 1996/1836	Regulations 2 to 6 and 8
Disability Discrimination (Services and Premises) Regulations 1999	SI 1999/1191	The whole Regulations
Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001	SI 2001/3253	Regulation 3 and the Schedule to the Regulations
Disability Discrimination (Providers of Services) (Adjustment of Premises) (Amendment) Regulations 2004	SI 2004/1429	The whole Regulations
Disability Discrimination (Providers of Services) (Adjustment of Premises) (Amendment) Regulations 2005	SI 2005/1121	The whole Regulations

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations revoke and replace (in part) the Disability Discrimination (Services and Premises) Regulations 1996 (S.I. 1996/1836), (in full) the Disability Discrimination (Services and Premises) Regulations 1999 (S.I. 1999/1191), (in full) the Disability Discrimination (Providers of Services) (Adjustment of Premises) (Amendment) Regulations 2004 (S.I. 2004/1429) and (in full) the Disability Discrimination (Providers of Services) (Adjustment of Premises) (Amendment) Regulations 2005 (S.I. 2005/1121). In addition, they amend the application of the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001 (S.I. 2001/3253) and revoke and replace Regulation 3 of and the Schedule to those Regulations. These changes partially consolidate provisions in relation to providers of services. In addition, these Regulations make provision in relation to public authorities, which arises out of new duties on public authorities carrying out their functions, introduced into the Disability Discrimination Act 1995 (“the 1995 Act”) by the Disability Discrimination Act 2005.

Regulation 3 (which replaces S.I. 1996/1836, Regulation 8) prescribes the circumstances where justification for discrimination on grounds of mental incapacity and inability to give informed consent in sections 20(4)(b) and 21D(4)(b) of the 1995 Act is not available. The Regulation applies to service providers and to public authorities carrying out functions. A minor change is made to the wording in relation to representatives appointed under the law of Scotland for disabled persons who lack capacity. This reflects changes to the law of Scotland made by the Adults with Incapacity (Scotland) Act 2000 (asp 4).

Regulations 4 to 8 (which replace S.I.1996/1836, Regulations 2 to 6) deal with justification for discrimination against disabled people by service providers, who provide insurance or guarantees for their services, or who request deposits in respect of goods and facilities they provide.

Regulation 9 (which replaces S.I.1999/1191, Regulation 3) sets out a list of things that are to be treated as “physical features” in the context of the duty to make reasonable adjustments in sections 21(2) and 21E(3) and (4) of the 1995 Act which apply to service providers and to public authorities carrying out functions respectively.

Regulation 10 (which replaces S.I. 2001/3253, Regulation 3(2)) sets out, in the context of the duty to make reasonable adjustments in sections 21(2) and 21E(3) and (4) of the 1995 Act, what are and what are not reasonable steps for service providers or public authorities carrying out functions to take, where they require the consent of a third party before making an alteration to premises that they occupy.

Regulation 11 (which introduces Schedule 1 and together they replace S.I. 2001/3253, Regulation 3(3) and (4) and the Schedule to those Regulations, S.I. 2004/1429 and S.I. 2005/1121) sets out, in the context of the duty to make reasonable adjustments in sections 21(2) and 21E(3) and (4) of the 1995 Act, what steps it is not reasonable for service providers or public authorities carrying out functions to take, where the premises that they occupy satisfy a relevant design standard. The meaning of “relevant design standard” is set out in detail in Schedule 1 to the Regulations, both in respect of Scotland and in respect of England and Wales.

Regulation 12 makes a transitional arrangement in respect of Regulation 8 of the Disability Discrimination (Services and Premises) Regulations 1996 (S.I. 1996/1836). With effect from 5th December 2005, Regulation 8 of the 1996 Regulations is amended to reflect the new regime introduced in Scotland for the legal representation of persons who lack capacity by the Adults with Incapacity (Scotland) Act 2000 (asp 4). As of 4th December 2006, Regulation 8 of the 1996 Regulations is revoked and replaced by Regulation 3 of these Regulations, the wording of which also reflects the new law in Scotland.

Regulation 13 amends the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001 (S.I. 2001/3253) (“the 2001 Regulations”) and inserts an application provision, which provides that the Regulations apply to service providers, public authorities

carrying out functions within the meaning of section 21B of the 1995 Act and to associations to which section 21F of the 1995 Act applies. Regulation 3 of the 2001 Regulations is replaced by Regulations 10 and 11 of these Regulations and revoked. The 2001 Regulations, as amended, relate therefore solely to the withholding of consent where the premises are occupied under a lease, sub-lease or sub-tenancy.

An assessment of the impact of these Regulations on bodies exercising public functions was made in relation to the Disability Discrimination Act 2005. Copies of this Regulatory Impact Assessment have previously been placed in the Libraries of both Houses of Parliament. Copies can be obtained from the Disability Rights Division of the Department for Work and Pensions, Level 6, the Adelphi, 1-11 John Adam Street, London WC2N 6HT.

Schedule 1 refers to “Approved Document M” (in the case of England and Wales) and “Technical Handbook” (in the case of Scotland). Copies of Approved Document M (2004 edition: ISBN 011 753901 5; 1999 edition: ISBN 011 753469 2; 1992 edition: ISBN 011 752447 6) are available from The Stationery Office Limited (mail, telephone, fax and e-mail orders only), PO Box 29, Norwich NR3 1GN (telephone orders 0870 600 5522, fax orders 0870 600 5533, e-mail bookorders@tso.co.uk, textphone 0870 240 3701, internet <http://www.tso.co.uk/bookshop>) and from The Stationery Office Bookshops. Copies of the non-domestic Technical Handbook (ISBN 09546292 3 X) published by Astron for the Scottish Buildings Standards Agency (“SBSA”) on 1st November 2004 can be found on the SBSA’s website at: <http://www.sbsa.gov.uk/tbooks/htm>. Alternatively, the Handbook is available in loose-leaf format from the Stationery Office Limited.

STATUTORY INSTRUMENTS

2005 No. 2901

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